Supreme Court, U.S.
FILED
02 647 OCT 7 2002
OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

****

ELDER LEWIS BANKS
PETITIONER,

v.

JEFFERSON-SMURFIT
RESPONDENT,

SUPPLEMENTAL APPENDIXES TO THE PETITION FOR A WRIT CERTIORARI

****

ELDER LEWIS BANKS
PETITIONER
3204 ANVIL PLACE
GREENSBORO, NC 27407
(336) 852-1684

APP

APPENDIX A1

FILED; June 6, 2002

JUDGMENT

UNITED STATES COURT OF APPEALS
For the
Fourth Circuit

No. 02-1063
CA-00-814-1

ELDER LEWIS BANKS
Plaintiff-Appellant,

v.

JEFFERSON SMURFIT CORPORATION
Defendant-Appellee,

Appeal from the United States District Court for the Middle District of North Carolina at Durham

---

In accordance with the written opinion of this Court filed this

Day, the Court affirms the judgment of the District Court.

/s/ Patricia S. Connor

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-1063

ELDER LEWIS BANKS
Plaintiff-Appellant,

Versus

JEFFERSON SMURFIT CORPORATION
Defendant-Appellee,

Appeal from the United States District Court for the Middle District of North Carolina at Durham. William L. Osteen, District Judge. (CA-00-814-1)

Submitted: May 30 2002 Decided: June 6, 2002

Before WILKINS, TRAXLER, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Elder Lewis Banks Appellant Pro Se. Fred Thurman Hamlet, Sr., Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit, see Local Rule 36 [c].

PER CURIAM:

Elder Lewis Banks appeals the district court's order granting summary judgment to his former employer on his employer on his employment discrimination claims. Our review of the record and the district court's opinion discloses no reversible error. Accordingly, we affirm on the reasoning of the district court. Banks v. Jefferson Smurfit Corp. , No. CA-00-814-1 [M.D.N.C. Dec. 18. 2001] . We also deny Banks' motion to review the record in No. CA-00-144-1. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX A2

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FILED
AUG 17 2000

ELDER LEWIS BANKS,
Plaintiff

v. *1:00-CV-00144*

JEFFERSON-SMURFIT,
Defendant,

MEMORANDUM OPINION

OSTEEN, District Judge

Plaintiff Elder Lewis Banks [Banks], acting pro se, filed this suit against Jefferson Smurfit [JS] alleging JS violated his civil and constitutional rights when JS hired a white person instead of promoting Banks, retaliated against Banks for filling grievances, and eventually fired him. This case is now before the court on JS's motion to dismiss under Federal Rule s of Civil Procedures 8 [a], 10, 12 [b] [1], and 12 [b] [6]. For the reasons stated herein, the court will grant JS's motion to dismiss Banks' complaint under Federal Rule of Civil Procedure 12 [b] [1].

I. Factual Background

On a motion to dismiss, the court will accept the facts alleged in the complaint as true. JS, Banks' employer, had an opening for the position of second pressman. The union agreement between JS and its employees requires JS to allow current employees to bid for a new position before hiring an outsider to fill the vacancy, unless none of the current employees were qualified to fill the position. Instead of posting the position for second pressman, JS hired a white person, Kevin Wells, JS then asked Banks to train Wells, Banks filed a grievance against JS for failing to post the position. Therefore, Banks' supervisors began scrutinizing his work closely. One

night, JS asked Banks to work past his normal hours because an employee did not come to work.

Banks informed JS he could not stay and left at his normal time. The next week JS accused him of walking off the job early. Banks repeatedly asked JS to check the call-in log, but never produced the log. A week later JS placed Banks on suspension then terminated him. JS accused two white employees and one black employee of leaving early but did not terminate them. Banks filed a grievance for his termination.

Banks also filed a charge with EEOC and Employment Security Commission [ESC]. The ESC held a hearing and found Banks was entitled to benefits for nine months. Banks' represented by the union, and JS went to arbitration over Banks' termination. The arbitrator ordered Banks' reinstatement. Once Banks went to work he filed two more grievances. One concerned the status of his seniority for the new position that came open, which grievance was denied, and the other dealt with Banks' treatment by his supervisors. JS investigated Banks' supervisors without a union representative, which led Banks to file a grievance based on an unfair investigation. When the investigation did take place, three black employee complained of discrimination by JS. JS held a meeting with Banks discuss his grievances. At he beginning of the meeting, Banks opened by giving honor to God as his Lord and Savior. The plant manager, George Holtz [Holtz], immediately stated there would be no praying and called off the meeting. Banks filed a grievance bases on JS's denial of his First Amendment rights. Five days later Holtz wrote a disciplinary action against Banks. Banks filed a grievance based on this reprimand. Two weeks later, the printing supervisor told Banks he needed to increase his work output based on Banks' comparison with other employees. Banks filed a grievance for harassment because his average output was one of the highest. A few weeks later, after allegedly giving warnings to Banks, JS wrote up Banks for excessive absenteeism. Banks alleges he never received any

warning about his absenteeism like other employees had, so he filed another grievance. [1]

Although Banks did not specifically set out in his complaint what statutes he is suing under, Banks consistently refers to discrimination based on his race, harassment, and retaliation. The heading of his complaint reads, "Violation of Title VII Civil Rights Act of 1964, §§§ 701 et. Seq. 703[a] [1], 704[a], as amended, 42 U.S.C.A. §§§ 2000e. et. seq. 2000e-2[a], and 42 U.S.C.A. §§ 1983, 1981." [Compl. At 2.] JS argues the court should dismiss the complaint because it does not contain a short and plain statement of the alleged claims, the court has no subject matter jurisdiction, and the complaint fails to state a claim.

II. Discussion

A. Federal Rule of Civil Procedures 8[a].

Federal Rule of Civil Procedures 8[a] requires a complaint to contain a short and plain statement of the grounds establishing a plaintiff's claims for relief. This requirement ensures that a defendant will have fair and adequate notice of the claims asserted. The pleading requirements established by Rule 8[a] are liberally construed in favor of the pleading party to avoid disputes over pleading technicalities. However, it is not enough to allege in a complaint that a wrong has been committed. A complaint must contain facts about the parties and incidents which provide the grounds upon which a plaintiff's claim for relief rests. Although courts hold pleadings drafted by pro se complaints to a lower standard that pleadings drafted by attorneys, see Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596 [1972], a pro se complaint must contain information to substantiate the alleged claims.

Banks ' complaint satisfied these requirements. His complaint sets out the parties involved, the dates of incidents, and their locations. In numbered paragraphs, Banks explains the facts of the alleged discrimination he suffered. JS argues Banks' complaint is too long. The complaint consists of 11 typed pages. Banks' brevity is commended.

---

[1] Banks does not mention in his complaint whether or not he still works at JS.

B. Subject Matter Jurisdiction

Before a plaintiff can file a Title VII suit in federal court, he must submit all of his claims to the EEOC and obtain a right to sue letter. Within 90 days of receiving the right to right to sue letter, the plaintiff must file his suit or the claims are barred. The failure to obtain a right to sue letter warrants the dismissal of a case. In his complaint, Banks alleges he filed a charge with the EEOC on February 5, 1998, after he was terminated for allegedly leaving work early. Banks did not filed until February 2000. Banks does not allege he received a right to sue letter or that he filed this suit within 90 days of receiving a letter.

Further, Banks does not allege he submitted the claims that arose after his termination to the EEOC. Therefore, the court will dismiss this case pursuant to Fed. R. Civ. P. 12[b] [1] without prejudice. [2]

Banks will have opportunity to refile his complaint alleging that he filed his claims with the EEOC and received a right to sue letter. It will not be enough for Banks merely to make these allegations, but he must attach the EEOC charge and right to sue letter to his complaint.

A judgment in accordance with this memorandum opinion shall be filed contemporaneously herewith.

This the 17 day of August 2000.

"s/William L. Osteen
United States District Judge

---

[2] Bases on the court's ruling, it is unnecessary to consider JS' alternative arguments.